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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

[Docket No. FWS-HQ-MB-2015-0161; FXMB12330900000//167//FF09M13200]

RIN 1018-BB23

Revision of Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to revise the regulations governing the annual Migratory Bird Hunting and Conservation Stamp Contest (also known as the Federal Duck Stamp Contest (contest)). Our amendments would update our contact information; update common names and spelling of species on

our list of contest design subjects; correct minor grammar errors; and specify the requirement to include a second, appropriate, migratory bird species in the artwork design beginning with the 2016 contest.

DATES: We will accept comments that we receive on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>.

In the Search box, enter FWS–HQ–MB–2015–0161, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

- *By hard copy:* Submit by U.S. mail or hand delivery to: Public Comments Processing, Attn: FWS–HQ–MB–2015–0161; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041-3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Public Comment**

Procedures and Public Availability of Comments under SUPPLEMENTARY INFORMATION for more information).

FOR FURTHER INFORMATION CONTACT: Suzanne Fellows, (703) 358-2145.

SUPPLEMENTARY INFORMATION:

Background

History of the Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Program

On March 16, 1934, Congress passed, and President Franklin D. Roosevelt signed, the Migratory Bird Hunting Stamp Act. Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a stamp annually. The revenue generated was originally earmarked for the Department of Agriculture, but 5 years later was transferred to the Department of the Interior and the Service. We are legislatively mandated to use the revenue first to administer the Duck Stamp permit program and contest, and secondly for conservation, to buy or lease waterfowl sanctuaries.

In the years since its enactment, the Federal Duck Stamp Program has become one of the most popular and successful conservation programs ever initiated. Today, some 1.8 million stamps are sold each year, and as of 2012, Federal Duck Stamps have generated more than \$800 million for the preservation of more than 6.5 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat protection made possible by the

program. An estimated one-third of the Nation's endangered and threatened species find food or shelter in refuges preserved by Duck Stamp funds. Moreover, the protected wetlands help dissipate storms, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

History of the Duck Stamp Contest

The first Federal Duck Stamp was designed at President Roosevelt's request by Jay N. “Ding” Darling, a nationally known political cartoonist for the *Des Moines Register* and a noted hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs. The first Federal Duck Stamp Contest was opened in 1949 to any U.S. artist who wished to enter, and 65 artists submitted a total of 88 design entries. Since then, the contest has attracted large numbers of entrants, and it remains the only art competition of its kind sponsored by the U.S. Government. The Secretary of the Interior appoints a panel of noted art, waterfowl, and philatelic authorities to select each year's winning design. Winners receive no compensation for the work, except a pane of their stamps, but winners may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

Proposed Changes to the Regulations at 50 CFR part 91

The regulations governing the contest are at 50 CFR part 91. Our proposed amendments would update our phone number and website information; update the common names and spellings of species on our list of potential contest design subjects; update the regulations

to require the inclusion of a secondary non-waterfowl migratory bird species on entries beginning with the 2016 contest; and correct minor grammar errors.

Service Contact Information

We propose to correct the telephone number at § 91.11 and the website address at §§ 91.1(b) and 91.11 of the Duck Stamp Office. These changes would ensure that the public can contact us and locate information about our program and the contest.

Updating Species' Common Names or Spellings

Section 91.4 contains our list of eligible waterfowl species. For each year's contest, we choose five or fewer species from the list; one or more of those species (or a combination thereof; see § 91.14) are the only acceptable subjects for entries during that contest year. We announce each year's eligible species in a **Federal Register** notice, as well as in other publicly available materials. Our list at § 91.4 contains scientific and common names accepted by the American Ornithologists' Union (AOU) (<http://www.aou.org/>; see also the AOU Checklist at <http://checklist.aou.org/taxa/>; this checklist is our standard reference on taxonomy, nomenclature, and capitalization). Since we last revised our regulations, the AOU has changed the listing order among species and updated several species names. Our proposed changes reflect changes in the order species are listed, revises the entry of "American Green-winged Teal (*Anas crecca carolinensis*)" to read "Green-winged Teal (*Anas crecca*)," and corrects the scientific name of Black Scoter from *Melanitta nigra* to *Melanitta americana*. We propose to make these changes to our list at § 91.4 to reflect the most current scientific and common names.

Including a Secondary Migratory Bird Species in 2016 Artwork Entries

Current § 91.14 explains that a live portrayal of any bird(s) of the five or fewer identified eligible waterfowl species must be the dominant feature of the design, but that the design may depict other appropriate elements such as hunting dogs, as long as an eligible waterfowl species is in the foreground and clearly the focus of attention. We propose to add to this section the requirement that an appropriate non-waterfowl migratory bird species must also appear in any entry submitted to beginning with the 2016 contest. We propose this change beginning with the 2016 contest in recognition of the 2016 Centennial anniversary of the Migratory Bird Treaty between the United States and Great Britain (on behalf of Canada) and to emphasize that habitat conservation benefits all wetland-dependent species.

Public Comments Procedures

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. We will accept public comments we receive on or before the date listed in the **DATES** section. We are striving to ensure that any amendments to the regulations resulting from this proposed rule would be in effect in plenty of time for the June opening of the 2016 contest. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please

include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information, such as your address, telephone number, or e-mail address—will be posted on the website. Please note that comments submitted to this website are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publically viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on <http://www.regulations.gov>.

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on <http://www.regulations.gov>. In the Search box, enter FWS–HQ–MB–2015–0161, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, select the type of documents you want to view under the Document Type heading.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public Availability of Comments

As stated above in more detail, before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for

improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 et seq.). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not

have a significant economic impact on a substantial number of small entities.

The changes we propose are intended primarily to clarify the requirements for the contest. These changes would affect individuals, not businesses or other small entities as defined in the Regulatory Flexibility Act. The requirement to include an appropriate secondary non-waterfowl migratory bird species in artwork for the 2016 contest may increase the appeal of the stamp to other conservation supporters. Currently stamp sales average approximately 1.8 million each year; with over 46 million self-identified bird watchers, 25 million wildlife photographers, and 45 million visitors to National Wildlife Refuges, it is hoped that an increase in Duck Stamp sales would occur from this change, but we are unable to quantify that possible increase. In recent years, we have received an average of 200 entries per year to our annual contest. It is assumed that, with the proposed regulatory changes, the quality and numbers of entries would reflect a broader artistic interest.

We therefore certify that, if adopted, this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- a. Would not have an annual effect on the economy of \$100 million or more.
- b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.
- c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Federalism

These proposed revisions to part 91 do not contain significant Federalism implications. A federalism summary impact statement under Executive Order 13132 is not required.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rulemaking does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

Takings

In accordance with E.O. 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any information collection requirements for which Office of Management and Budget approval is required under the PRA (44 U.S.C. 3501 et seq.). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This proposed rule is categorically excluded. It reflects an administrative modification of procedures and the impacts are limited to administrative effects (516 DM 8.5(a)(3)). A detailed statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is therefore not required.

Government-to-Government Relationship with Tribes

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who enter the duck stamp contest.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. This proposed rule would revise the current regulations at 50 CFR part 91 that govern the Federal duck stamp contest. This rule would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rulemaking, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 91, subchapter G of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

1. The authority citation for part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Amend § 91.1(b) by revising the third sentence to read as follows:

§ 91.1 Purpose of regulations.

* * * * *

- (b) * * * These documents can also be downloaded from our Web site at:

<http://www.fws.gov/birds/get-involved/duck-stamp.php>.

* * * * *

3. Revise § 91.4 to read as follows:

§ 91.4 Eligible species.

Five or fewer of the species listed below will be identified as eligible each year; those eligible species will be provided to each contestant with the information provided in § 91.1.

(a) *Whistling-Ducks*. (1) Black-bellied Whistling-Duck (*Dendrocygna autumnalis*)

(2) Fulvous Whistling-Duck (*Dendrocygna bicolor*)

(b) *Geese*. (1) Greater White-fronted Goose (*Anser albifrons*)

(2) Emperor Goose (*Chen canagica*)

(3) Snow Goose (including “white” and “blue” morphs) (*Chen caerulescens*)

(4) Ross’s Goose (*Chen rossii*)

(5) Brant (*Branta bernicla*)

(6) Canada Goose (*Branta canadensis*)

(7) Cackling Goose (*Branta hutchinsii*)

(c) *Swans*. (1) Trumpeter Swan (*Cygnus buccinator*)

(2) Tundra Swan (*Cygnus columbianus*)

(d) *Dabbling Ducks*. (1) Wood Duck (*Aix sponsa*)

(2) Gadwall (*Anas strepera*)

(3) American Wigeon (*Anas americana*)

(4) American Black Duck (*Anas rubripes*)

(5) Mallard (*Anas platyrhynchos*)

(6) Mottled Duck (*Anas fulvigula*)

(7) Blue-winged Teal (*Anas discors*)

(8) Cinnamon Teal (*Anas cyanoptera*)

(9) Northern Shoveler (*Anas clypeata*)

- (10) Northern Pintail (*Anas acuta*)
- (11) Green-winged Teal (*Anas crecca*)
- (e) *Diving Ducks*. (1) Canvasback (*Aythya valisineria*)
- (2) Redhead (*Aythya americana*)
- (3) Ring-necked Duck (*Aythya collaris*)
- (4) Greater Scaup (*Aythya marila*)
- (5) Lesser Scaup (*Aythya affinis*)
- (f) *Sea-Ducks*. (1) Steller's Eider (*Polysticta stelleri*)
- (2) Spectacled Eider (*Somateria fischeri*)
- (3) King Eider (*Somateria spectabilis*)
- (4) Common Eider (*Somateria mollissima*)
- (5) Harlequin Duck (*Histrionicus histrionicus*)
- (6) Surf Scoter (*Melanitta perspicillata*)
- (7) White-winged Scoter (*Melanitta fusca*)
- (8) Black Scoter (*Melanitta americana*)
- (9) Long-tailed Duck (*Clangula hyemalis*)
- (10) Bufflehead (*Bucephala albeola*)
- (11) Common Goldeneye (*Bucephala clangula*)
- (12) Barrow's Goldeneye (*Bucephala islandica*)
- (g) *Mergansers*. (1) Hooded Merganser (*Lophodytes cucullatus*)
- (2) Common Merganser (*Mergus merganser*)
- (3) Red-breasted Merganser (*Mergus serrator*)
- (h) *Stiff Tails*. (1) Ruddy Duck (*Oxyura jamaicensis*)

(2) [Reserved]

4. Revise § 91.11 to read as follows:

§ 91.11 Contest opening date and entry deadline.

The contest officially opens on June 1 of each year. Entries must be postmarked no later than midnight, August 15. For the latest information on contest time and place as well as all deadlines, please visit our Web site at *<http://www.fws.gov/birds/get-involved/duck-stamp.php>* or call (703) 358-2145.

5. Revise § 91.14 to read as follows:

§ 91.14 Restrictions on subject matter for entry.

A live portrayal of any bird(s) of the five or fewer identified eligible waterfowl species must be the dominant feature of the design. Additionally, beginning with the 2016 contest, a live portrayal of an appropriate, identifiable non-waterfowl, migratory bird species is also required to be included in the design. An appropriate species includes any non-waterfowl species on the List of Migratory Birds at 50 CFR 10.13 that would naturally occur with the depicted eligible waterfowl species in the same season and habitat setting. Designs may also include, but are not limited to, hunting dogs, hunting scenes, use of waterfowl decoys, National Wildlife Refuges as the background of habitat scenes, noneligible species, or other designs that depict uses of the stamp for sporting, conservation, and collecting purposes. Judges' overall mandate is to select the best design that will make an interesting, useful, and attractive duck stamp that will be accepted and prized by hunters, stamp collectors, conservationists, and others. The design must be the

contestant's original hand-drawn creation. The entry design may not be copied or duplicated from previously published art, including photographs, or from images in any format published on the Internet. Photographs, computer-generated art, or art produced from a computer printer or other computer/mechanical output device (airbrush method excepted) are not eligible to be entered into the contest and will be disqualified. An entry submitted in a prior contest that was not selected for a Federal or State stamp design may be submitted in the current contest if the entry meets the above criteria.

Date: January 28, 2016.

Karen Hyun,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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